

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Jurisdictional Separations and Referral)	CC Docket No. 80-286
To the Federal-State Joint Board)	
)	
Petition by Eastex Telephone Cooperative, Inc.)	
For Waiver of 47 C.F.R. Sections 36.3, 36.123-126,)	
36.141, 36.152-157, 36.191 and 36.372-382)	
To Unfreeze Part 36 Category Relationships)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ files these reply comments in response to the Federal Communications Commission's (Commission's or FCC's) February 8, 2012, public notice seeking comment on Eastex Telephone Cooperative Inc.'s (Eastex) petition (Petition)² for waiver concerning the Commission's Part 36 Jurisdictional separation rules (Notice).³ NTCA supports Eastex, a rural rate-of-return incumbent local exchange carrier (ILEC), in its efforts to unfreeze its Part 36 Category Relationships, and urges the Commission to grant the Petition.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 570 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Petition of Eastex Telephone Cooperative, Inc. for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286 (filed May 18, 2011) (Petition).

³ *Comment Sought on a Petition Filed by Eastex Telephone Cooperative, Inc. for Waiver Concerning the Commission's Part 36 Jurisdictional Separation Rules*, CC Docket No. 80-286, DA 12-168, (rel. Feb. 8, 2012) (Notice), p. 1.

I. BACKGROUND.

On May 18, 2011, Eastex filed its Petition, seeking a waiver of 47 C.F.R. Sections Part 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 as those rules apply to frozen category relationships.⁴ Eastex serves over 24,000 access lines and offers local, long distance, and broadband Internet service to 21 exchanges over 11 rural counties in East Texas.⁵ Eastex's service area stretches 125 miles from its upper to its lower boundaries and is composed of six noncontiguous portions of one study area.⁶ Eastex opted to freeze its category relationships following the Commission's 2001 Separations Report and Order.⁷ Initially, the freeze was set to expire on June 30, 2006, or when the Commission completed comprehensive separations reform, whichever came first.⁸ In 2006, the FCC extended the freeze for three years or until the Commission completed comprehensive separations reform, whichever came first,⁹ and then repeatedly extended the freeze for one year intervals, with the most recent decision extending the freeze until June 30, 2012.¹⁰

⁴ Petition, p. 1.

⁵ *Id.*, p. 2.

⁶ *Ibid.*

⁷ *Id.*, p. 5; *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286 (rel. May 22, 2001) (2001 Separations Order).

⁸ 2001 Separations Order, ¶ 9.

⁹ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5523, ¶ 16 (2006.)

¹⁰ See, *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 09-44 (rel. May 15, 2009); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 10-89 (rel. May 25, 2010); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 11-71 (rel. May 4, 2011).

Eastex seeks the Part 36 waiver because its network demands have changed substantially since the 2001 freeze. In the four years from January 2007 through December 2010, Eastex invested \$55 million to enable the installation of broadband-capable telecommunications network plant.¹¹ As a direct result of these investments, Eastex serves over 8,000 DSL customers, offering 3 Mbps service to approximately 80 percent of its service territory and offering 768 kbps to 95 percent of the service area.¹² The company's network includes approximately 5,241 route miles of copper cable and 377 miles of fiber optic cable.¹³ Eastex has equipped all of its exchanges with digital switches, and has converted all of its switches to softswitches.¹⁴ Eastex has also been actively installing fiber optic cable throughout its service area to shorten loop lengths in order to provide more bandwidth.¹⁵

Eastex's frozen categories, however, have prevented the company from properly allocating its costs, thus preventing the Cooperative from receiving additional cost-based settlements. Grant of Eastex's petition would allow the company to begin to receive additional interstate pool settlements and would not place any additional burden on the high-cost loop fund.

¹¹ Petition, p. 5.

¹² *Id.*, p. 2.

¹³ *Id.*, p. 3.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

II. THE COMMISSION SHOULD ALLOW EASTEX TO UNFREEZE ITS CATEGORIES.

The Commission may waive any of its rules for good cause shown, such as where strict compliance to a rule is inconsistent with the public interest.¹⁶ Eastex has met the burden of showing good cause in this particular matter. Grant of Eastex's waiver petition is in the best interests of the consumers served by the Company, and will not harm any other providers.

Eastex has made investments through the years with the expectation that the freeze would end in the five-year time period, as specified by the FCC in the 2001 Separations Order. It did not anticipate that the freeze would last for an extended period of time, as it subsequently has.¹⁷ Grant of Eastex' petition would not threaten the overall policy objective of the freeze, but rather would allow Eastex to recover its costs in a manner that would not impact the high-cost loop fund in any way.

The extended freeze has created a significant "cost-revenue mismatch" with the result that an excessive amount of net investment has been allocated to the intrastate jurisdiction. Eastex asserts that grant of the instant petition will result in a shifting of 13 percent of net investment to the interstate jurisdiction.¹⁸ In addition, the proportion of expenses allocated to the intrastate jurisdiction would decrease while expenses allocated to the interstate jurisdiction would result in a shift of 7 percent to interstate.¹⁹ The net result would be an overall decrease in Eastex's high-cost loop support of \$584,005, coupled with additional cost-based settlements of

¹⁶ 47 C.F.R. § 1.3.

¹⁷ Petition, p. 5.

¹⁸ *Id.*, p. 8.

¹⁹ *Id.*, p. 8-9.

\$2,577,407, for a net gain in settlements of \$1,993,402.²⁰ Because Eastex is a cost company and participates in the NECA pooling process, all of these additional settlements would come from the NECA interstate traffic sensitive pool settlements and would have a net positive impact on the high-cost loop fund.²¹

Eastex plans to use the additional funds “to expand and enhance broadband offerings” by undertaking such projects as shortening loop lengths and installing fiber to anchor institutions.²² These steps will benefit other providers as well, as Eastex’s infrastructure would be available for their use. For example, wireless carriers may use Eastex’s fiber and copper facilities to provide service in rural Texas. Grant of Eastex’s petition is in the public interest.

Eastex has requested that its waiver be granted prior to June 30, 2012, the date when the existing freeze is scheduled to expire and one day prior to the day when near-term universal service reforms are scheduled to take effect. Such a timeline is more than reasonable and should be granted.

NTCA, together with the National Exchange Carrier Association (NECA) and several other ILEC trade associations, has urged the Commission in this docket to provide rate-of-return carriers a one-time option to freeze or unfreeze their category relationships for the remainder of the overall interim freeze.²³ Rate-of-return carriers like Eastex made their initial election

²⁰ *Id.*, p. 9.

²¹ *Ibid.*

²² *Ibid.*

²³ *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Comments of the National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Eastern Rural Telecom Association and the Western Telecommunications Alliance (filed March 28, 2011), pp. 4-5.

regarding whether or not to freeze their category relationships based on an expectation that the freeze would last for the time specified by the Commission. With the extension of the category freeze for an additional six years, Eastex should be granted the option to reconsider its original decision in light of changed circumstances. Eastex has presented a compelling case for the FCC to grant a waiver; the Commission, therefore, should grant the requested waiver within the requested timeframe.

III. CONCLUSION.

For these reasons, the Commission should move expeditiously to grant Eastex's Petition.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

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March 26, 2012

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 80-286, DA 12-168, was served on this 26th day of March 2012 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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